

ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION RECEIVED

Washington, D.C. 20554

OCT 23 1996

Federal Communications Commission  
Office of Secretary

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations )

(Farmersville, Blue Ridge, )

Bridgeport, Eastland, )

Flower Mound, Greenville, )

Henderson, Jacksboro, Mineola, )

Mt. Enterprise, Sherman and )

Tatum, Texas; and Ada, Ardmore )

and Comanche, Oklahoma) )

MM Docket No. 96-10

RM-8738

RM-8799

RM-8800

RM-8801

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TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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RESPONSE TO PUBLIC NOTICE

Hunt Broadcasting, Inc., licensee of Station KIKM-FM, Sherman, Texas, and permittee of Station KJKB,<sup>1/</sup> Jacksboro, Texas, and Cowboy Broadcasting, L.L.C., licensee of Station KVMX(FM), Eastland, Texas (collectively "KIKM"), jointly by their counsel, hereby respond to the Public Notice of October 8, 1996, Report No. 2158. The Public Notice amended the previous Public Notice of May 9, 1996, Report No. 2130 which accepted KIKM's counterproposal. According to the October 8, 1996, Public Notice, the Commission has discovered that a previously filed application for Channel 204C2 at Ada, Oklahoma

<sup>1/</sup> The call sign has been changed from KAIH to KJKB.

(BPED-960404MB) conflicts with KIKM's proposal to substitute Channel 257A for Channel 244A at Ada, Oklahoma. In accordance with the Note to Section 73.208(a) of the Commission's Rules and Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 8 FCC Rcd 4743 (1993), KIKM is afforded fifteen (15) days to resolve the conflict provided that KIKM demonstrates that in exercising due diligence it did not know of the pendency of the conflicting application when the counterproposal was filed. In support hereof, KIKM states as follows:

1. KIKM did not know that the application of American Family Association for Channel 204C2 at Ada, Oklahoma, which was filed on April 4, 1996, was pending when the KIKM counterproposal was filed one day later on April 5, 1996. KIKM exercised due diligence by having its engineer access the FCC's data base on April 4, 1996, for the channel study to determine that Channel 257A could be substituted for Channel 244A at Ada, Oklahoma. See Exhibit E, Figure 10 of KIKM's "Joint Counterproposal" which indicates a search date of April 4, 1996. In fact, KIKM's engineering consultant, Paul Reynolds, did perform another channel study on April 5, 1996, to again confirm that there were no short spacings. See attached Statement of Paul Reynolds. It was not until after the amended Public Notice was issued on October 8, 1996, that KIKM first became aware of the conflict. Indeed, the Allocations Branch staff was not aware of the application when it issued its Public Notice on May 9, 1996, and accepted KIKM's counterproposal without

reference to American Family Association's pending application. Accordingly, KIKM states that it did exercise due diligence and could not have discovered the American Family Association application of April 4, 1996, when it filed its counterproposal on April 5, 1996.

2. Upon discovering that there was a conflicting application on October 8, 1996, KIKM immediately contacted American Family Association. As a result of discussions between the parties, American Family Association has agreed to amend its application to specify another transmitter site in its pending application which does not conflict with the KIKM proposal for Channel 257A at Ada. American Family Association has provided the attached statement confirming its willingness to amend its application. See Exhibit 1. The amendment is currently being prepared and is expected to be filed within a few days. KIKM will supplement the record in this proceeding by notifying the staff when the amendment is filed.

3. Accordingly, the American Family Association application does not present an impediment to the grant of KIKM's counterproposal.

#### **SUPPLEMENTAL INFORMATION**

4. At this time, KIKM desires to supplement the record in this proceeding by providing updated information regarding three of the affected stations. First, on September 10, 1996, the FCC approved the assignment of license for Station KRXZ(FM), Ardmore,

Oklahoma, from Oklahoma Sports Properties, Inc. to KRIG, Inc. See Public Notice of September 16, 1996, Report No. 43826. The Vice President of KRIG, Inc., has supplied a Declaration in which he agrees to implement the changes proposed for Station KRXZ(FM) as proposed by KIKM's counterproposal and which were previously agreed to by the prior licensee, namely, a change in channel and transmitter site.

5. Second, Dean Broadcasting, Inc., has filed an application to transfer control of its license for Station KGRI-FM, Henderson, Texas, to Hunt Broadcasting, Inc. (BTCH-961004GI). Hunt Broadcasting, Inc., hereby states that upon FCC approval and consummation of the transfer of control of Station KGRI-FM, it will comply with the Commission's order to relocate the transmitter site, change the class of channel and provide a first local service to Tatum, Texas. See attached Declaration of Hunt Broadcasting, Inc.

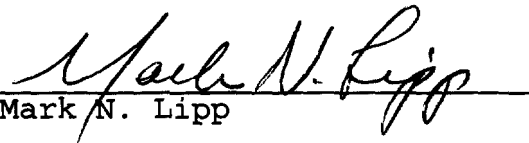
6. Third, KIKM was served with the "Petition to Deny" filed by Ted Haynes d/b/a Community Broadcast Network, licensee of Station KBOC(FM), Bridgeport, Texas, dated September 4, 1996. KIKM has decided not to file a formal response to this pleading. Rather, KIKM has contacted Mr. Ted Haynes to discuss a reimbursement figure in the event the Commission orders the proposed channel change. An agreement has been reached between the parties concerning reimbursement, and KIKM expects to supplement the record in this proceeding to report that Mr. Haynes will

consent to the channel change. In filing this supplement, KIKM believes that it will no longer be necessary for the Commission to issue an Order to Show Cause for the purpose of changing KBOC's channel. The Commission should not interpret KIKM's decision not to file a response at this time as being in agreement with Mr. Haynes assertions as they relate to prior negotiations between the parties or the impact of the proposed channel change on KBOC. In fact, KIKM does not agree with Mr. Haynes assertions but does not believe a response would assist the Commission in resolving this proceeding.

Respectfully submitted,

**HUNT BROADCASTING, INC.**  
**COWBOY BROADCASTING, L.L.C.**

By:

  
Mark N. Lipp

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Their Counsel

October 23, 1996

MULLIN, RHYNE

ID:202-872-0604

OCT 23'96

16:16 No.022 P.07

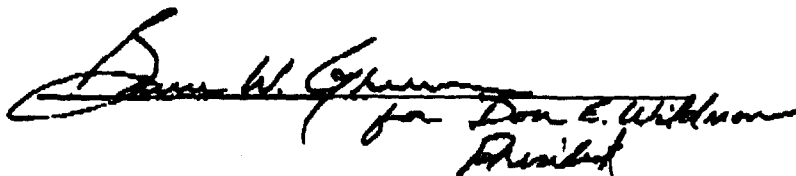
**American Family Association****Application for Channel 204C2****Ada, Oklahoma****BPXD-960404MB**

American Family Association ("Family") hereby agrees to amend the above-referenced application for Channel 204C2 to a new location which eliminates the current short spacing to the rule making proposal in MM Docket 96-10 proposing to substitute Channel 257A for Channel 244A at Ada, Oklahoma, consistent with §73.207 of the Commission's Rules. Family intends to file the amendment within seven (7) days. Family understands that this statement may be used in a filing at the Federal Communications Commission and hereby authorizes its use for this purpose.

I verify that this statement is true and accurate to the best of my knowledge, information and belief and is made in good faith.

**AMERICAN FAMILY ASSOCIATION**

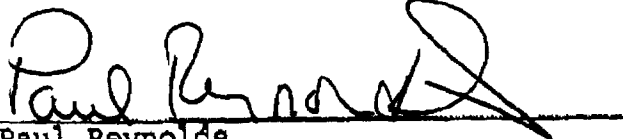
By:

  
for Don E. Wilkerson  
President

DECLARATION  
OF  
PAUL REYNOLDS

In preparing the channel studies for the engineering portion of the Joint Counterproposal, I performed channel studies to confirm that Channel 257A could be substituted at Ada, Oklahoma. The database I use is updated weekly and did not contain the listing for American Family Association's application for Channel 204C2 at Ada, Oklahoma. I ran the channel study for Channel 257A at Ada again on April 5, 1996, and found no short spacings at that time.

I certify that this statement is true, complete and correct to the best of my knowledge and belief and is made in good faith.

  
Paul Reynolds  
Engineering Consultant

**Station KRXZ**

**Ardmore, Oklahoma**

**DECLARATION**

I, Bruce Campbell, am President of KRIG, Inc., proposed assignee of Station KRXZ(FM), Ardmore, Oklahoma (BAPLH-960767GE). Should the Commission modify the license for Station KRXZ to specify Channel 253A at a new transmitter location, I hereby agree to comply with the Commission's order to change channels and relocate the transmitter site, to the extent necessary, to meet the Commission's technical rules.

A handwritten signature in cursive script that reads "Bruce Campbell". The signature is written in dark ink and is positioned above a horizontal line.

**Bruce Campbell  
Vice President  
KRIG, Inc.**



Henderson, Texas

Tatum, Texas

Mt. Enterprise, Texas

DECLARATION OF HUNT BROADCASTING, INC.

Upon FCC approval of the application for transfer of control for Station KGRI-FM, and consummation of the transaction, I will provide a first local service to Tatum, Texas, on Channel 262A and relocate the transmitter site in compliance with the Commission's Order issued in this proceeding. I also intend to file an application for Channel 260A at Mt. Enterprise and construct the facility, if authorized to do so. I understand that this statement may be used in a filing at the Federal Communications Commission and I hereby authorize its use for that purpose.

I verify that this statement is true, complete and correct to the best of my knowledge and belief and is made in good faith.

A handwritten signature in black ink, appearing to read "Janice A. Hunt", is written over a horizontal line.

Janice Hunt  
President  
Hunt Broadcasting, Inc.

## CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 23rd day of October, 1996, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "RESPONSE TO PUBLIC NOTICE" to the following:

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\* HAND DELIVERED

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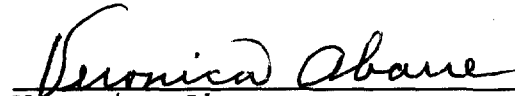
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Veronica Abarre